

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL A. JACKSON,

Plaintiff,

v.

TAYLOR S. YOUNG *et al.*,

Defendants.

Case No. C07-5480RBL/JKA

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
APRIL 11, 2008**

This 42 U.S.C. § 1983 action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. Before the court is defendants' motion to dismiss filed February 11, 2008 (Dkt # 53).

Plaintiff has not responded to this motion and instead filed a frivolous motion for default, (Dkt # 56), and a motion asking for discovery (Dkt # 61). Neither of these filings address the pending motion to dismiss.

FACTS

Defendant's statement of the facts is unopposed and is adopted by the court as follows:

1 Plaintiff, Michael A. Jackson, is a Washington State prisoner currently  
 2 incarcerated at Stafford Creek Corrections Center (SCCC) located in Aberdeen,  
 3 Washington. On October 29, 2007, Plaintiff filed an Amended Complaint (Dkt. 12)  
 4 under 42 U.S.C. § 1983 alleging that his rights were violated by Defendants Young  
 5 and Walsh for forcing him to take medications for a mental illness that he has never  
 6 had and by Defendant Daniels for incorrectly refusing to categorize a piece of  
 outgoing mail as "legal mail." See Amended Complaint, Attachment "Statement of  
 Claim" at pp. 1-2. For relief, Plaintiff seeks from Defendants Young and Walsh: "to  
 clear my Mental Health record of any Mental illness and medication" and \$20 million  
 in damages; and, from Defendant Daniels: \$10, 000 in damages. Id. at paragraph V.

7 Defendant Taylor S. Young, Ph.D., is a psychologist employed by DOC, who  
 8 Plaintiff alleges forced him to take the medication risperidone (sic) and that he has  
 9 never been mentally ill. See Amended Complaint, Attachment "Statement of Claim" at  
 p. 1. Plaintiff filed a grievance with a Level I response that included: "Per  
 Psychologist 3 T. Walsh, you are entitled to decline medication at anytime." See  
 Amended Complaint, Exhibit 1.

10 Defendant Roland Daniels is a Corrections Officer at SCCC, who Plaintiff  
 11 alleges erred in how he handled an outgoing letter to Columbia Legal Services. See  
 12 Amended Complaint, Attachment "Statement of Claim" at p. 2. Plaintiff filed a timely  
 13 grievance which resulted in the following finding at Level I: "You are correct. Your  
 letter to Columbia Legal Services was/is legal mail. CO Daniels has been informed  
 this is legal mail." See Amended Complaint, Exhibit 2.

14 On page 2 of his Amended Complaint, Plaintiff indicates his awareness of a  
 15 grievance process at SCCC and that he completed the process for "Log-0715599"  
 16 and "Log-0715244." See Amended Complaint, § II.C. For each grievance, Plaintiff  
 attached a one page document entitled "Level 1 – Initial Grievance." See Amended  
 Complaint, Exhibits 1 and 2.

17 Since the 1980's, DOC has had an Offender Grievance Program (OGP) in  
 18 effect. The OGP includes a process with three levels of review to complete a  
 19 grievance. See Exhibit 1, Declaration of Devon Schrum, ¶ 3, with attachments.  
 20 Plaintiff prevailed in his grievance regarding Defendant Daniels, numbered 0715599.  
 See Amended Complaint, Exhibit 2. In the grievance regarding Defendants Young  
 and Walsh, Plaintiff only sought review to Level II, failing to complete the grievance  
 process. Id. at ¶ 5.

(Dkt. # 53, pages 1 to 3).

#### 21 STANDARD OF REVIEW

22 Defendants argue the proper standard of review for a motion of this nature is under Fed. R.  
 23 Civ. P. 12 (b)(6) (Dkt # 53, page 4 citing Super Mail Cargo Inc. v. United States, 68 F.3d 1204 n.2  
 24 (9th Cir 1995)). Plaintiff has not responded to the motion. A court should dismiss a claim under  
 25 Fed. R. Civ. P. 12(b)(6) if it appears beyond doubt that the plaintiff can prove no set of facts to  
 26 support the claim that would entitle the plaintiff to relief. Keniston v. Roberts, 717 F.2d 1295, 1300  
 27

(9th Cir. 1983), citing; Conley v. Gibson, 355 U.S. 41, 45-56 (1957). Dismissal for failure to state a claim may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the complaint is construed in the plaintiff's favor. Keniston v. Roberts, 717 F.2d 1295 (9th Cir. 1983).

## DISCUSSION

### A. Failure to exhaust administrative remedies, (medication claims)

The Prison Litigation Reform Act ("PLRA") requires exhaustion of administrative remedies prior to filing a complaint in federal court. The relevant portion of the act states:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a).

Here, plaintiff filed this action while incarcerated and the act applies to him. The United States Supreme Court determined that Congress enacted the provision in order to reduce the quantity and improve the quality of prisoner suits. Porter v. Nussle, 534 U.S. 516 (2002). By mandating exhaustion, Congress enabled corrections officials to address prisoner complaints internally. Where exhaustion was once discretionary, it is now mandatory. "All 'available' remedies must now be exhausted; those remedies need not meet federal standards, nor must they be 'plain, speedy, and effective.'" Porter v. Nussle, 534 U.S. 516 (2002) (quoting Booth v. Churner, 532 U.S. 731, 739 (2001)). The Porter Court ruled that "§ 1997e(a)'s exhaustion requirement applies to all prisoners seeking redress for prison circumstances or occurrences." Porter, 534 U.S. at 520.

Plaintiff did not pursue his grievance regarding forced medication past the second level. He did not exhaust his administrative remedies (Dkt. # 53, Exhibit 1, affidavit of grievance program manager Devon Schrum). The motion to dismiss this claim should be **GRANTED**. This would be **DISMISSAL WITHOUT PREJUDICE**.

### B. Claim regarding legal mail.

Plaintiff exhausted this claim and received relief using the grievance process. The facts are

1 simple. Plaintiff attempted to mail a letter to Columbia Legal services and was told by Daniels the letter  
2 was not legal mail. Plaintiff filed a grievance and the decision of the officer Daniels was reversed.  
3 Plaintiffs' mail was recognized as legal mail. Defendants argue:

4 The Civil Rights Act, 42 U.S.C. § 1983, is not merely a "font of tort law."  
5 Parratt, 451 U.S. at 532. That plaintiff may have suffered harm implicating a recognized  
6 liberty interest, even if due to prison staff's negligent conduct, does not in itself result in  
an abridgment of constitutional protections. Davidson v. Cannon, 474 U.S. 344, 347-348  
(1986).

7 In Davidson, the inmate had been assaulted by another inmate and seriously  
8 injured two days after he had told two prison staff of a threat by the other inmate. Id. at  
345-346. The inmate filed a § 1983 complaint alleging violation of his rights under the  
9 Eighth and Fourteenth Amendments. Id. at 346. The Fourteenth Amendment forbids a  
state to "deprive any person of life, liberty, or property without due process of law." U.S.  
10 Const. amend. XIV. The U.S. Supreme Court clarified the limits of protection:  
11 "(r)espondents' lack of due care in this case led to serious injury, but that lack of care  
simply does not approach the sort of abusive government conduct that the Due Process  
Clause was designed to prevent." Id. at 348.

12 In stark contrast to the serious harm caused to the inmate in Davidson, the  
13 Plaintiff here has alleged no constitutional deprivation and no harm as a result of one  
letter not being declared "legal mail." See Amended Complaint, Attachment to paragraph  
14 IV, Statement of Claim, p. 2. Here, Defendant Daniels' mistake was most likely not  
negligent, but inadvertent and nowhere near the type of "abusive government conduct  
15 that the Due Process Clause was designed to prevent." Id. Hence, in concert with  
Davidson, Plaintiff did not suffer an abridgement of any constitutional rights, has failed  
16 to state a § 1983 claim and his Amended Complaint should be dismissed.

17 In addition, Plaintiff fails to state a claim under the Due Process Clause of the  
Fourteenth Amendment because he successfully utilized the DOC grievance process. He  
18 prevailed at Level I and Officer Daniels was instructed of his error. Hence, the process  
worked the way it is intended. Hence, Plaintiff also has no due process claim to meet the  
19 second element of a claim under 42 U.S.C. § 1983.

20 If Plaintiff is making an inferred due process claim, it is devoid of merit. He fails  
to allege that Defendant Daniels deprived him of any life or liberty without due process.  
21 On this basis and the failure to allege deprivation of any constitutional right, Plaintiff's  
complaint should be dismissed for failure to state a claim for which relief can be granted.

22 (Dkt. # 53, pages 7 and 8).

23 Plaintiff has not responded to this argument. Local 7 (b)(2) states that failure to file papers in  
24 opposition to a motion may be considered by the court as an admission the motion has merit. The court  
25 adopts defendants' argument as the motion is unopposed. This claim should be **DISMISSED WITH**  
26 **PREJUDICE.**

27 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
28 REPORT AND RECOMMENDATION- 4

1 Procedure, the parties shall have ten (10) days from service of this Report to file written objections.  
2 *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for  
3 purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed  
4 by Rule 72(b), the clerk is directed to set the matter for consideration on **April 11, 2008**, as noted in  
5 the caption.

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8 DATED this 14 day of March, 2008.

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10 /S/ J. Kelley Arnold  
11 J. Kelley Arnold  
12 United States Magistrate  
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